

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-2486/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s Sealair Freighters International Private Limited**

Registered office at:  
250, First Floor,  
Sant Nagar, East of Kailash  
New Delhi- 110065

...Applicant/Operational Creditor

**Versus**

**Tescos Life Care Private Limited**

Registered Office at:  
2/215, Maharaja Aggarsain Commercial Complex,  
Sector-9, Rohini,  
New Delhi- 110085

...Respondent/Corporate Debtor

**Coram:**

**SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**SHRI. VK. SUBURAJ, Hon'ble Member (Technical)**

**Counsel for Applicant:** Mr. Himanshu Jain and Mr. Manish Kumar, Advocates

**Counsel for Respondent:** Mr. Sachin Aggarwal and Mr. Amit Rao, Advocates

IB-2486/ND/2019

Sealair Freighters International Private Limited vs. Tescos Life Care Private Limited



**ORDER**

**Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 01.04.2021**

1. This is an application filed by the Applicant Sealair Freighters International Private Limited through its Authorized Representative Mr. Anurag Sharma seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent Tescos Life care Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 31,60,990/- (Rupees Thirty-One Lakh Sixty Thousand Nine Hundred and Ninety rupees only), as alleged by the applicant, towards the services provided by the Applicant. The details of transactions leading to the filing of this application as averred by the Operational Creditor are as follows:

- i. That the Operational Creditor is engaged in providing services of freight at domestic and International level. The operational creditor stated that he was contacted by the Corporate Debtor for supply of goods to abroad, hence on 11.03.2017 vide

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Invoice number AE-03542 and AE-03543 the goods of Corporate Debtor were sent to Frankfurt and Amsterdam respectively by the Operational Creditor.

- ii. The operational creditor further stated that in furtherance to the Invoice numbered AE-03542 AND AE-03543, Airway Bill Numbered 023-22765-4281 and 023-2765-4270 and terminal Charges were also generated on 12.03.2017.
- iii. That on 20.03.2017, the invoice numbered AE-03645 along with Airway bill numbered 023-2765-7906 for the goods being dispatched to Frankfurt and invoice numbered AE-03646 for the goods being dispatched to Amsterdam were generated and the same was duly delivered well on time by the Operational Creditor. It was further submitted by the Operational Creditor that no complaint of deficiency was ever received.
- iv. The operational creditor stated that on 08.04.2017, the Invoices bearing Invoice Number AE-00002 and AE-00001 were issued by the Operational Creditor for the goods being dispatched again to Amsterdam



and Frankfurt respectively, in furtherance of the Invoices number AE-00002 and AE-00001 Airway Bill numbered 618-4108-5144 and 618-4108-5133 and Terminal charges receipt were generated on 09.04.2017 in favor of the Corporate Debtor.

- v. It was further stated by the operational creditor that for making part payments, Corporate ' debtor issued Cheques bearing no. 984480 and 984479, drawn in favor of Sealair Freighters International Private Limited and drawn on Punjab National Bank, of amount Rs. 6,95,875/- (Six Lac Ninety-Five Thousand Eight Hundred Seventy-Five Rupees Only) and of amount Rs. 6,92,125/- (Six Lac Ninety-Two Thousand One Hundred Twenty-Five Rupees Only) respectively on 16.04.2017. That the same were presented by the operational Creditor on 18.04.2017 and a Return cheque advice from Punjab National Bank was served for cheques numbered 984480 and 984479 stating reason of dishonor being "EXCEEDS ARRANGMENT".



- vi. The Operational Creditor stated that vide dated 20.04.2017, cheque numbered 984483 and 984482, were drawn in favor of Sealair Freighters International Private Limited drawn on Punjab National Bank of amount Rs. 7,06,225 and Rs. 6,78,283/- respectively
- vii. That Operational Creditor submits that a statutory Demand notice dated 11.02.2019 under section 8 of IBC, 2016 was delivered to the Respondent dated 09.08.2019. It was further submitted by the applicant that no reply or payment of any dues has been received till date.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply Affidavit on behalf of the Corporate Debtor stating that:

- i. The Corporate Debtor in its reply stated that the amount claimed by the operational creditor is totally a dispute amount and further submitted that there is a pre-existing dispute between the parties in regard to certain invoices mentioned in the application,

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therefore, the corporate debtor claims that the present application is not maintainable.

- ii. The Corporate Debtor further submits that no purchase orders were issued against the Invoices bearing Invoice no. AE-00001 dated 08.04.2017 and AE-00002 dated 08.04.2017, further the Corporate Debtor also states that the above said Invoices were issued to a different firm namely "Amaze Enterprises" and the same has never been issued in the name of Corporate Debtor.
- iii. The Corporate Debtor further alleges in its reply that the operational creditor has forged the original tax invoices and mentioned the name of the present Corporate Debtor on the invoices filed in the present application.
- iv. Further it was stated by the corporate Debtor in its reply that the operational creditor in his email vide dated 11.04.2017 (inadvertently mentioned as 11.04.2019 in reply) stated to the Corporate Debtor to ignore about the wrongly sent email regarding the disputed invoices. The Corporate Debtor further



submits that he requested the Operational creditor to send correct invoices as wrong invoices were sent by the Operational Creditor

3. The Counsel for the operational creditor vides dated 16.02.2021 prayed for grant of time for filing the written arguments whereas, vide dated 02.02.2021 the counsel for the operational creditor informed the Tribunal that they did not intend to file any written arguments in the said matter.

4. The Counsel for the Corporate Debtor has filed its written submissions in respect to the submissions made in the application:

- It was submitted that the demand notice has never been delivered to the address of the corporate debtor and not even reached at the Post office of Corporate Debtor area.
- It was further submitted that as the demand notice dated 11.02.2019 had not been served upon the Corporate Debtor hence, the corporate Debtor could not submit any reply under section 8(2)(a).



5. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.
  
6. On Perusal of Application as well as the documents enclosed, the Email Communication between the operational creditor and the Corporate Debtor clearly establishes the fact that there was pre-existing dispute between both the parties.
  
7. The fact that the email dated 11.04.2017, wherein the operational creditor sent the mail to the Corporate Debtor stating "Please Ignore mail wrongly sending you" and the email dated 12.04.2017 wherein, the Corporate Debtor mentioned about the mistake of the Operational Creditor regarding mentioning of the wrong companies name in the invoices issued to the Corporate Debtor. Afterwards, the email dated 27.05.2017, wherein the Corporate Debtor specifically stated that the Invoice No. AE-00001 and AE-



00002 is not related to corporate Debtor which has already been informed to operational creditor.

8. It is further pertinent to mention that the existence of dispute regarding the invoices was raised by the Corporate Debtor in the Email Trail communication vide dated 11.04.2017, 12.04.2017 and 27.05.2017 between the Operational creditor and Corporate Debtor clearly establishes the fact that there was pre-existence of Dispute between both the parties prior to the issuance of demand notice dated 11.02.2019.

9. The Hon'ble Supreme Court In "**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC On Line SC 353**", analyzed the meaning of dispute with respect to Operational Creditors and observed:

*"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of*

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*10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. ....”*

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: .....*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”*

*If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

10. From the aforesaid decision, it is clear that the dispute must exist before the receipt of demand notice. Be that as it may, on appraisal of the arguments advanced by the Ld. Counsels, it emerges that there were disputes existing prior to the issuance of the Demand Notice.



11. For the reasons discussed above, since there is a pre-existing dispute between the parties, we have no option but to reject the prayer of the Operational Creditor to initiate proceedings under Section 9 of IBC, 2016.

12. Accordingly, we hereby **dismiss** the present application.



**(SH. V.K. SUBBURAJ)**  
**MEMBER (TECHNICAL)**



**(SH. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

RDS